

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

San Diego Wood Preserving Company, a
California Corporation
2010 Haffly Drive
National City, California 91950
EPA ID Number CAD981454689

Respondent

Docket RPDD 06/07 SCC-4376

OVERSIGHT AGREEMENT FOR
CLOSURE OF DRIP PADS

Health and Safety Code
Section 25187

INTRODUCTION

1. The Department of Toxic Substances Control (DTSC) and San Diego Wood Preserving Company (Respondent) enter into this Oversight Agreement for Closure of Drip Pads (Agreement) and agree as follows:

1.1. Jurisdiction exists pursuant to Health and Safety Code section 25187, which authorizes DTSC to implement and enforce Chapter 6.5 of the Health and Safety Code ("Hazardous Waste Control Laws") and the regulations adopted by DTSC to implement the Hazardous Waste Control Laws. DTSC has jurisdiction over closure of "existing drip pads" as defined by section California Code of Regulations, Title 22, section 66265.440.

1.2. The parties enter into this Agreement to carry out closure of the facility's existing asphalt-concrete drip pads described below.

1.3. Respondent is a generator of hazardous waste who also accumulated hazardous waste on drip pads for less than 90 days as required by the California Code of Regulations, title 22 (Cal. Code Regs., tit. 22), section 66262.34 at the facility located at 2010 Haffly Drive, National City, California 91950 (Facility).

1.4. Respondent is required to comply with closure requirements for its existing drip pads pursuant to the California Code of Regulations, title 22, section 66265.445 at closure.

1.5. The terms used in this Agreement are as defined in California Code of Regulations, title 22, section 66260.10, except as otherwise provided.

1.6. Respondent agrees to implement all DTSC-approved workplans and to undertake all actions required by the terms and conditions of this Agreement, including any portions of this Agreement incorporated by reference.

1.7. Respondent waives any right to request a hearing on this Agreement pursuant to Health and Safety Code section 25187.

FINDINGS OF FACT

2.1. Respondent conducted wood treatment at the Facility from 1978 until 2007. The wood treatment process included incising holes into lumber to increase the penetration of the federally registered wood treatment pesticides into the lumber; vacuum and pressure application of the pesticides into the lumber inside an above-ground 40-ft cylindrical pressure vessel; and drying the treated lumber on the existing asphalt-concrete drip pads. Some of the pesticides used at the Facility include pentachlorophenol, creosote, ammonium-zinc-copper-arsenate, copper-chromium arsenate, and borates.

2.1.1. In May 2006, Respondent submitted a closure plan to the San Diego Environmental Health Certified Unified Program Agency (CUPA).

2.1.2. In November 2006, the CUPA referred the closure activity to DTSC since the closure of the existing drip pads are regulated under California Code of Regulations, title 22, section 66265.445.

2.1.3. On January 23, 2007, Respondent submitted to DTSC the electronic copies of the "Soil and Groundwater Investigation Report" (Report) and Closure Plan dated January 22, 2007. The analysis of the soil samples are documented in the Report.

2.1.4. On February 15, 2007 DTSC conducted an inspection at the Facility and found that the Facility's wood treatment operations were inactive at the time.

2.2. Based on the inspection and information submitted to DTSC, DTSC concludes that hazardous waste and hazardous wastes constituents in the form of federally registered pesticides have been released to soil and groundwater from or through the existing drip pads.

2.3. The hazardous waste and hazardous waste constituents of concern at the Facility are metals, total petroleum hydrocarbons, volatile organic compounds, semi-volatile organic compounds, pentachlorophenol and pentachlorophenol constituents including dioxins.

2.4. The Facility is located in an industrial zoned area of National City, situated west of Interstate Freeway 5, and approximately 1,200 feet east of the San Diego Bay.

2.5. Releases from the Facility have migrated to soil and groundwater. Workers at the Facility may become exposed to the contaminated soil on site during work related activities, including development and construction activities.

PROJECT COORDINATOR

3. Within 14 days of the effective date of this Agreement, DTSC and Respondent shall each designate a Project Coordinator and shall notify each other in writing of the Project Coordinator selected. Each Project Coordinator shall be responsible for overseeing the implementation of this Agreement and for designating a person to act in his/her absence. All communications between Respondent and DTSC, and all documents, report approvals, and other correspondence concerning the activities performed pursuant to this Agreement shall be directed through the Project Coordinators. Each party may change its Project Coordinator with at least seven days prior written notice.

SCHEDULE OF COMPLIANCE

4.1. Respondent has submitted to DTSC a Closure Plan for the existing drip pads pursuant to California Code of Regulations, title 22, section 66265.445.

4.1.1. At closure of the existing drip pads, as required by California Code of Regulations, title 22, section 66265.445(a), Respondent shall remove or decontaminate all wastes and residues, contaminated containment system components (pads, liners, etc.), contaminated subsoil, and structures and equipment contaminated with hazardous waste leakage, and manage them as hazardous waste in accordance with the closure plan. If Respondent finds that not all contaminated subsoil can be practically removed or decontaminated, Respondent shall close and perform post-closure in accordance with the closure, and post closure care requirements in accordance with California Code of Regulations, title 22, section 66265.310 as required.

4.1.2. Respondent shall comply with the closure plan requirements pursuant to California Code of Regulations, title 22, section 66265.112; and contingent post-closure care pursuant to section 66265.118.

4.1.3. The Closure and Post-Closure Care shall include the cost estimates calculated under California Code of Regulations, title 22, sections 66265.112 and 66265.144 for closure of the existing drip pads.

CLOSURE PLAN APPROVAL

5.1. In completing the Closure Plan approval, DTSC will perform the following activities:

- Review the Closure Plan and Post Closure Care submittals
- Prepare the required CEQA documents
- Public Notice the draft Closure Plan pursuant to California Code of Regulations, title 22, section 66265.112(d); and CEQA documents
- Provide response to any public comments received during the public comment period
- Make a decision on the Closure Plan and CEQA documents
- Notify Respondent of the decision to approve the draft Closure Plan as submitted, or with modification.

CLOSURE IMPLEMENTATION

6.1. Respondent shall begin implementation of the Closure Plan within 60 days from the date DTSC approves the Closure Plan.

6.2. DTSC shall provide oversight of all the field activities during the implementation of the approved Closure Plan and Post Closure Care including the sampling and installation of the Cover and Monitoring wells if required.

CLOSURE CERTIFICATION

7. Within 60 days from the completion of the Closure Implementation, Respondent shall submit to DTSC by registered mail a Closure Report and Certification that the Facility has been closed in accordance with the specifications in the approved Closure Plan. The Closure Report shall include the details of the closure activities, including risk evaluation to determine the potential human and ecological risk from the hazardous waste constituents left at the site. The Certification shall be signed by the Respondent and by an independent qualified professional engineer, registered in California pursuant to California Code of Regulations, title 22, section 66265.115.

POST CLOSURE CARE NOTICES

8. Within 60 days of certification of closure, Respondent shall record, in accordance with State law and California Code of Regulations, title 22, section 66265.119, a notation on the deed to the Facility property, or in some instrument which is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that the land has been used to manage hazardous wastes, and of any use restrictions if required by the Closure certification. Respondent shall

submit to DTSC a certification that the notation has been recorded, including copy of the document in which the notation has been placed.

COST ESTIMATE FOR POST CLOSURE CARE

9. Respondent shall prepare and submit to DTSC a written detailed estimate in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility.

FINANCIAL ASSURANCE FOR POST-CLOSURE CARE

10. Respondent shall comply with the Financial Assurance for Post-Closure Care requirements pursuant to California Code of Regulations, title 22, section 66265.145.

OPERATIONS AND MAINTENANCE

11.1. Respondent shall submit an annual report to DTSC which shall include any repairs and the monitoring data during the year.

11.2. DTSC may perform annual inspection of the facility and will notify the Respondent if additional necessary actions should be performed at the Facility to comply with the Post-Closure Care requirements.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

12. DTSC must comply with the California Environmental Quality Act (CEQA) insofar as activities required by this Consent Agreement are projects subject to CEQA. Respondent shall provide all information necessary to facilitate any CEQA analysis. DTSC will make an initial determination regarding the applicability of CEQA. If the activities are not exempt from CEQA, DTSC will conduct an Initial Study.

DTSC APPROVAL

13.1. Respondent shall revise the Closure Plan in accordance with DTSC's written comments. Respondent shall submit to DTSC any revised documents by the due date specified by DTSC. Revised submittals are subject to DTSC's approval or disapproval.

13.2. Upon receipt of DTSC's written approval, Respondent shall commence work and implement the Closure Plan in accordance with the schedule and provisions contained therein.

13.3. The DTSC-approved Closure Plan shall be deemed incorporated into this Agreement.

13.4. Verbal advice, suggestions, or comments given by DTSC representatives will not constitute an official approval or decision.

SUBMITTALS

14.1. Beginning with the first full month following the effective date of this Agreement, Respondent shall provide DTSC with quarterly progress reports of closure activities conducted pursuant to this Agreement. Progress reports are due on the tenth day of the first month following the close of each reporting period. The progress reports shall conform to the Scope of Work for Progress Reports contained in Attachment 1. DTSC may adjust the frequency of progress reporting to be consistent with site-specific activities.

14.2. Any report or other document submitted by Respondent pursuant to this Agreement shall be signed and certified by the project coordinator, a responsible corporate officer, or a duly authorized representative.

14.3. The certification required by paragraph 14.2 above, shall be in the following form:

I certify that the information contained in or accompanying this submittal is true, accurate, and complete. As to those portions of this submittal for which I cannot personally verify the accuracy, I certify that this submittal and all attachments were prepared at my direction in accordance with procedures designed to assure that qualified personnel properly gathered and evaluated the information submitted.

Signature: _____
Name: _____
Title: _____
Date: _____

14.4. Respondent shall provide least two hard copies and electronic copy of the Closure Plan and Report. Submittals specifically exempted from this copy requirement are all progress reports and correspondence of less than 15 pages, of which one copy is required.

14.5. Unless otherwise specified, all reports, correspondence, approvals, disapprovals, notices, or other submissions relating to this Agreement shall be in writing and shall be sent to the current Project Coordinators.

ADDITIONAL WORK

15. DTSC may determine or Respondent may propose that certain tasks, including investigatory work, engineering evaluation, or procedure/methodology modifications are necessary in addition to, or in lieu of, the tasks and deliverables included in the Closure Plan to achieve closure of the existing drip pads in compliance with California Code of Regulations, title 22, section 66265.445. DTSC shall request in writing that Respondent perform such additional work and shall specify the basis and reasons for DTSC's determination that the additional work is necessary. Within 14 days after the receipt of such determination, Respondent may confer with DTSC to discuss the additional work DTSC has requested. If required by DTSC, Respondent shall submit to DTSC a workplan for the additional work. Such workplan shall be submitted to DTSC within 30 days of receipt of DTSC's determination or according to an alternate schedule established by DTSC. Upon approval of a workplan, Respondent shall implement it in accordance with the provisions and schedule contained therein. The need for, and disputes concerning, additional work are subject to the dispute resolution procedures specified in this Consent Agreement.

QUALITY ASSURANCE

16.1. All sampling and analyses performed by Respondent under this Agreement shall follow applicable DTSC and U.S. EPA guidance for sampling and analysis. Workplans shall contain quality assurance/quality control and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the approved workplans must be approved by DTSC prior to implementation, must be documented, including reasons for the deviations, and must be reported in the applicable report.

16.2. The names, addresses, and telephone numbers of the California State certified analytical laboratories Respondent proposes to use must be specified in the applicable workplans.

SAMPLING AND DATA/DOCUMENT AVAILABILITY

17.1. Respondent shall submit to DTSC upon request the results of all sampling and/or tests generated by its employees, agents, consultants, or contractors conducted pursuant to this Agreement.

17.2. Respondent shall notify DTSC in writing at least seven days prior to beginning each separate phase of field work approved under any workplan required by this Agreement. If Respondent believes it must commence emergency field activities without delay, Respondent may seek emergency telephone authorization from DTSC Project Coordinator or, if the Project Coordinator is unavailable, his/her Branch Chief, to commence such activities immediately.

17.3. At the request of DTSC, Respondent shall provide or allow DTSC or its authorized representative to take split or duplicate samples of all samples collected by Respondent pursuant to this Agreement. Similarly, at the request of Respondent, DTSC shall allow Respondent or its authorized representative to take split or duplicate samples of all samples collected by DTSC under this Agreement.

ACCESS

18. Subject to the Facility's security and safety procedures, Respondent agrees to provide DTSC and its representatives access at all reasonable times to the Facility which is required for implementation of this Agreement and shall permit such persons to inspect and copy all relevant unprivileged records, files, photographs, documents, including all sampling and monitoring data, that pertain to work undertaken pursuant to this Agreement and that are within the possession or under the control of Respondent or its contractors or consultants.

RECORD PRESERVATION

19.1. Respondent shall retain, during the pendency of this Agreement and for a minimum of four years after its termination, the Closure Plan and Closure Report. Respondent shall notify DTSC in writing 90 days prior to the destruction of any such records, and shall provide DTSC with the opportunity to take possession of any such records. Such written notification shall reference the effective date, caption, and docket number of this Agreement and shall be addressed to:

Mr. Stephen W. Lavinger, Chief
Tiered Permitting Corrective Action Branch
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

19.2. If Respondent retains or employs any agent, consultant, or contractor for the purpose of carrying out the terms of this Agreement, Respondent will require any such agents, consultants, or contractors to provide Respondent a copy of all documents produced pursuant to this Agreement.

19.3. All documents required to be produced under this Agreement shall be stored in a central location at the Facility, or at a location otherwise agreed to by the parties, to afford easy access by DTSC and its representatives.

DISPUTE RESOLUTION

20.1. The parties agree to use their best efforts to resolve all disputes informally. The parties agree that the procedures contained in this section are the sole administrative procedures for resolving disputes arising under this Agreement. If Respondent unreasonably fails to materially follow the procedures contained in this section, it shall have waived its right to further consideration of the disputed issue.

20.2. If Respondent disagrees with any written decision by DTSC pursuant to this Agreement, Respondent's Project Coordinator shall orally notify DTSC's Project Coordinator of the dispute. The Project Coordinators shall attempt to resolve the dispute informally.

20.3. If the Project Coordinators cannot resolve the dispute informally, Respondent may pursue the matter formally by placing its objection in writing. Respondent's written objection must be forwarded to Chief, Tiered Permitting Corrective Action Branch, Hazardous Waste Management Program, Department of Toxic Substances Control, with a copy to DTSC's Project Coordinator. The written objection must be mailed to the Branch Chief within 14 business days of Respondent's receipt of DTSC's written decision. Respondent's written objection must set forth the specific points of the dispute and the basis for Respondent's position.

20.4. DTSC and Respondent shall have 14 business days from DTSC's receipt of Respondent's written objection to resolve the dispute through formal discussions. This period may be extended by DTSC for good cause. During such period, Respondent and DTSC will make reasonable efforts to meet and confer to discuss the dispute.

20.5. After the formal discussion period, DTSC will provide Respondent with its written decision on the dispute within fourteen (14) calendar days. DTSC's final written decision will reflect any agreements or decisions during the formal discussion period and be signed by the Branch Chief or his/her designee. In the event DTSC and Respondent do not reach agreement on any disputed item, Respondent retains its rights to seek review of DTSC's final decision pursuant to state law.

20.6. During the pendency of all dispute resolution procedures set forth above, the time periods for completion of work required under this Agreement that are affected by such dispute shall be extended for a period of time not to exceed the actual time taken to resolve the dispute. The existence of a dispute shall not excuse, toll, or suspend any other compliance obligation or deadline required pursuant to this Agreement.

RESERVATION OF RIGHTS

21.1. DTSC reserves all of its statutory and regulatory powers, authorities, rights, and remedies, which may pertain to Respondent's failure to comply with any of the requirements of this Agreement. Respondent reserves all of its statutory and regulatory rights, defenses and remedies, as they may arise under this Agreement. This Agreement shall not be construed as a covenant not to sue, release, waiver, or limitation on any powers, authorities, rights, defenses or remedies, civil or criminal, that DTSC or Respondent may have under any laws, regulations or common law.

21.2. Subject to the provisions of this Agreement, DTSC reserves the right to disapprove of work performed by Respondent pursuant to this Agreement and to request that Respondent perform additional tasks.

21.3. Subject to the provisions of this Agreement, DTSC reserves the right to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and/or remedial actions it deems necessary to protect human health and/or the environment. DTSC may exercise its authority under any applicable state or federal law or regulation to undertake response actions at any time. DTSC reserves its right to seek reimbursement as provided by Health and Safety Code from Respondent for costs incurred by the State of California with respect to such actions. DTSC will notify Respondent in writing as soon as practicable regarding the decision to perform any work described in this section.

21.4. Subject to the provisions of this Agreement, if DTSC determines that activities in compliance or noncompliance with this Agreement have caused or may cause a release of hazardous waste and/or hazardous waste constituents, or a threat to human health and/or the environment, or that Respondent is not capable of undertaking any of the work required, DTSC may order Respondent to stop further implementation of this Agreement for such period of time as DTSC determines may be needed to abate any such release or threat and/or to undertake any action which DTSC determines is necessary to abate such release or threat. The deadlines for any actions required of Respondent under this Agreement affected by the order to stop work shall be extended to take into account DTSC's actions.

21.5. This Agreement is not intended to be nor shall it be construed to be a permit. This Agreement is not a substitute for, and does not preclude DTSC from requiring, any hazardous waste facility permit, post closure permit, closure plan or post closure plan in accordance with the Health & Safety Code. The parties acknowledge and agree that DTSC's approval of any workplan, plan, and/or specification does not constitute a warranty or representation that the workplans, plans, and/or specifications will achieve the required cleanup or performance standards. Compliance by Respondent with the terms of this Agreement shall not relieve Respondent of its obligations to comply with the Health and Safety Code or any other applicable local, state, or federal law or regulation.

OTHER CLAIMS

22. Except as provided in this Agreement, nothing in this Agreement shall constitute or be construed as a release by DTSC or Respondent from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken or migrating from the Facility.

COMPLIANCE WITH WASTE DISCHARGE REQUIREMENTS

23. Subject to the provisions of this Agreement, Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board.

OTHER APPLICABLE LAWS

24. All actions required by this Agreement shall be conducted in accordance with the requirements of all local, state, and federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

REIMBURSEMENT OF DTSC'S COSTS

25.1. Subject to the provisions of this Agreement, Respondent shall pay DTSC's reasonable costs it incurs in the implementation of this Agreement.

25.2. An estimate of DTSC's costs to implement and oversee this Agreement is attached as Exhibit A showing the amount of \$43,251.00. It is understood by the parties that this amount is only a cost estimate for the activities shown on Exhibit A and it may differ from the actual costs incurred by DTSC in overseeing these activities or in implementing this Agreement. If the actual costs differ from the estimate, DTSC will provide additional written cost estimates to Respondent prior to exceeding cost estimate as the work progresses under the Agreement.

25.3. Respondent shall make an advance payment to DTSC in the amount of \$21,625.50 within 30 days of the effective date of this Agreement. If the payment exceeds DTSC's costs, DTSC will refund the balance within 120 days after the execution of the Acknowledgment of Satisfaction pursuant to Section 28 of this Agreement.

25.4. DTSC will provide Respondent with a billing statement at least quarterly, which will include the name(s) of the employee(s), identification of the activities, the amount of time spent on each activity, and the hourly rate charged. If Respondent does not pay an invoice within 60 days of the date of the billing statement, the amount is subject to interest as provided by Health and Safety Code section 25360.1.

25.5. DTSC will retain all costs records associated with the work performed under this Agreement as required by state law. DTSC will provide Respondent with a copy of all documents that support the DTSC's cost determination available for inspection upon request, as provided by the Public Records Act.

25.6. Any dispute concerning DTSC's costs incurred pursuant to this Agreement is subject to the Dispute Resolution provision of this Agreement and the dispute resolution procedures as established pursuant to Health and Safety Code section 25269.2. DTSC reserves its right to recover unpaid costs under applicable state and federal laws.

25.7. All payments shall be made within 30 days of the date of the Respondent's receipt of the billing statement by check payable to the Department of Toxic Substances Control and shall be sent to:

Accounting Unit
Department of Toxic Substances Control
P. O. Box 806
Sacramento, California 95812-0806

All checks shall reference the name of the Facility, the Respondent's name and address, and the docket number of this Agreement. Copies of all checks and letters transmitting such checks shall be sent simultaneously to DTSC's Project Coordinator.

MODIFICATION

26.1. This Agreement may be modified by mutual agreement of the parties. Any agreed modification shall be in writing, shall be signed by both parties, shall have as its effective date the date on which it is signed by all the parties, and shall be deemed incorporated into this Agreement.

26.2. Any requests for revision of an approved workplan requirement must be in writing. Such requests must be timely and provide justification for any proposed workplan revision. DTSC has no obligation to approve such requests, but if it does so, such approval will be in writing and signed by the Chief, Tiered Permitting Corrective Action Branch, Hazardous Waste Management Program, Department of Toxic Substances Control, or his or her designee. Any approved workplan revision shall be incorporated by reference into this Agreement.

TERMINATION AND SATISFACTION

27. The provisions of this Agreement shall be deemed satisfied upon the execution by both parties of an Acknowledgment of Satisfaction (Acknowledgment). DTSC will prepare the Acknowledgment for Respondent's signature. The Acknowledgment will specify that Respondent has demonstrated to the satisfaction of DTSC that the terms of this Agreement including payment of DTSC's costs have been satisfactorily completed. The Acknowledgment will affirm Respondent's continuing obligation to preserve all records after the rest of the Agreement is satisfactorily completed.

EFFECTIVE DATE

28. The effective date of this Agreement shall be the date on which this Agreement is signed by all the parties. Except as otherwise specified, "days" means calendar days.

SIGNATORIES

29. Each undersigned representative certifies that he or she is fully authorized to enter into this Agreement.

Date: 7/12/07

By: Original signed by Mark N. Baker
Signature of Respondent's Representative

Mark N. Baker, Vice-President
Printed Name and Title
San Diego Wood Preserving Company

Date: 7/17/07

By: Original signed by Stephen W. Lavinger
Stephen W. Lavinger, Chief
Tiered Permitting Corrective Action Branch
Department of Toxic Substances Control

This Agreement posted on DTSC's website does not include all attachments from the original document. If you need copies of a specific document, please contact the DTSC project manager.